O.F. 71.

1937 P14

Department of Land Sett

OFFICE Boards of Revenue

STATION Madras.

Mis No. 474	
Dated 8.2.37.	

F 4980/37

Pages in the file

(SUBJECT.)

Alienation ... (Bellary) Bellary Taluk. Kappagal
Sarapha. Survey. ... by
officials & Others - M.L.A. ... High Ct
Remand to Lower Court - Pl's Regd. Sanctd.

C.F. 32.

In reply, please quote number, date and short title.*

Judicial DEPARTMENT.

Received 19 NOV 1936 Registered FL980

From (Name) M.R.Ry., K.S.Krishnaswami Iyengar avl.,

(Designation) Government Pleader,

Post Box ....., (Station) Madras.

Telegraphic Address .....

To

The Secretary to the Board of Revenue,
Land Revenue & Settlement.

Sir,

No. 1201, dated 18th Novr. 1936

Enclosures .....

Spare Copies .....

C.M.A.No.195/34 - High Court - Advances - Loans - Bellary.

Board's U.O.4305/33-5, dated 7-2-34 and my letter No.925, dated 22-9-36.

As the Collector of Bellary in his letter Ref.C.No.4809/36A1, dated 11-11-36 writes to say that the petition is posted to 15-12-36 for trial in the District Court, Bellary and that certified copy of the judgment of the High Court may be sent urgently to him, I have the honour to state that certified copies of decree and judgment in the above appeal have this day been forwarded to the Collector of Bellary. I have the honour to request that the Board will be pleased to sanction payment to me of Rs.35/- being my fees therein and issue a certificate that the amount sanctioned is not in excess of the amount which the Board is empowered to sanction.

The Collector of Bellary may be requested to countersign and return the enclosed bill for the amount.

I have the honour to be,
Sir,
Your most obedient servant,
K.S. Krishnaswami Ayy

Government Pleader.

BOARD OF REVENUE
27 NOV 1936

GOVERNMENT OF MADRAS

95731

Revenue Department. 1 7

ENDORSEMENT No.4627 E/36-1, dated the 24th November 1936.

Advances - Loans - (Bellary) - Madras High Court - C.M.A.No.195 of 1934 - Result - Copy of judgment.

Letter from the Government Pleader No.1200, dated 18-11-1936.

Communicated to the Board of Revenue in continuation of Government Endorsement No.3769 E/36-1, dated the 26th November 1936.

Up 61 Jg. M 1779 / 27534 ©

T.M.S. Mani,
Under Secretary to Government.

To the Board of Revenue with copy of letter and the certified copy of Judgment.

Copy to the Government Pleader, Madras.

F o r w a r d e d
(By Order)

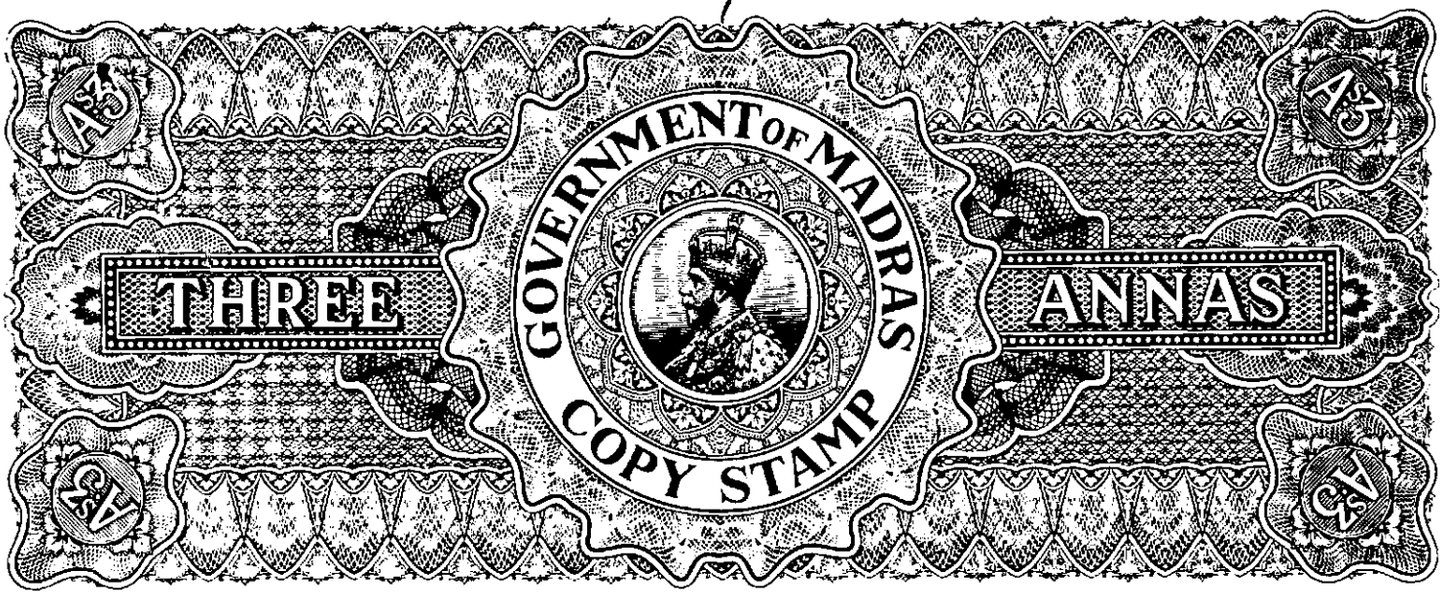
Superintendent.

P.T.C.

Copy of letter from the Government Pleader, Madras, No.1200, dated the 18th November 1936, to the Secretary to the Government of Madras, Revenue Department.

SUBJECT:-Advances - Loans - (Bellary) - Madras High Court - C.M.A.No.195 of 1934 - Result - Public copy of judgment - forwarding.

In continuation of my letter No.1926, dated 22nd September 1936 reporting result in C.M.A.No.195 of 1934 on the file of the High Court, I have the honour to forward herewith a certified copy of judgment of the High Court thereinl



In the High Court of Judicature at Madras.

Monday, the twenty first day of September,

One thousand nine hundred and thirty Six.

Present:---

The Honourable Mr. Justice Cornish.

Appeal Against Order No. 195 of 1934.

The Secretary of State for India in Council represented by the Collector of Bellary -- Appellant (Petitioner)

1. Kappagal Indiga Irappa 2 Kappagal Idiga Sunkappa 3 Kappagal Indiga Sechamma. 4 Bellary Arele Muddappa 5 Official Receiver Bellary -- -- -- Respondents (Counter-Petitioners)

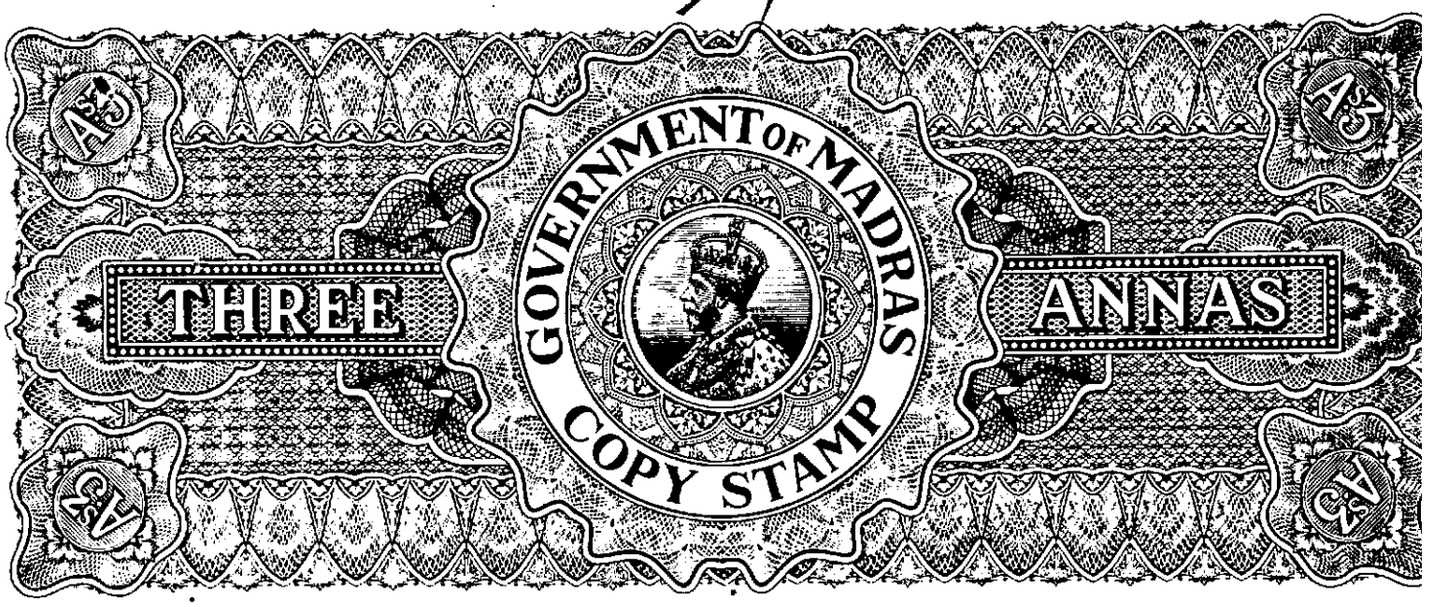
Appeal against the order of the District Court of Bellary dated the 24th day of October 1933, and made in I.A. No. 669 of 1932 in I.P. No. 13 of 1927.

ORDER:- This Appeal coming on for hearing, the court delivered the following JUDGMENT:-

The Appeal is against an order of the District Judge of Bellary dismissing an application made under Sections 68 and 78 of the Provincial Insolvency Act on behalf of the Secretary of State for India in Council to set aside a sale of an insolvents' property by the Official Receiver.

The application was made on 1-12-1932.

175/
Tsri
1st cht



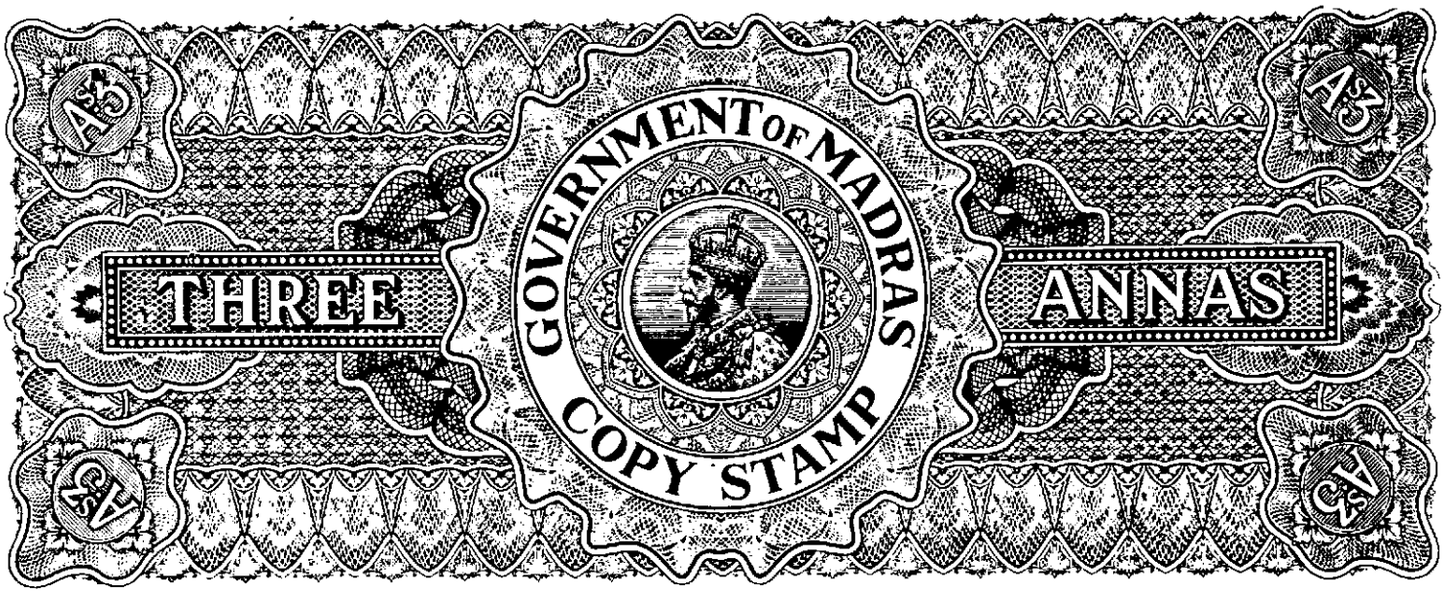
and the sale which was sought to be set aside had been held on 10/11/1931, and confirmed by the court on 26/1/1932. The application was therefore long beyond the time limit allowed by Section 68. The applicant, however relied on section 5 of the Limitation Act which according to section 78 governs applications made to the Insolvency court.

The learned District Judge dismissed the application as out of time. That it undoubtedly was But with all respect he does not seem to have applied his mind to the question whether the applicant had sufficient cause for not having made his application within the proper time limit. His reasoning was that the information of the date of sale was communicated to the Tahsildar. The Tahsildar was the agent of the Secretary of State and therefore the latter must be taken to be affected with the knowledge of the result of the sale as soon as it had taken place. It seems to me that this line of reasoning misses the real point which was when did the Collector

175/

Tori

2nd sht.



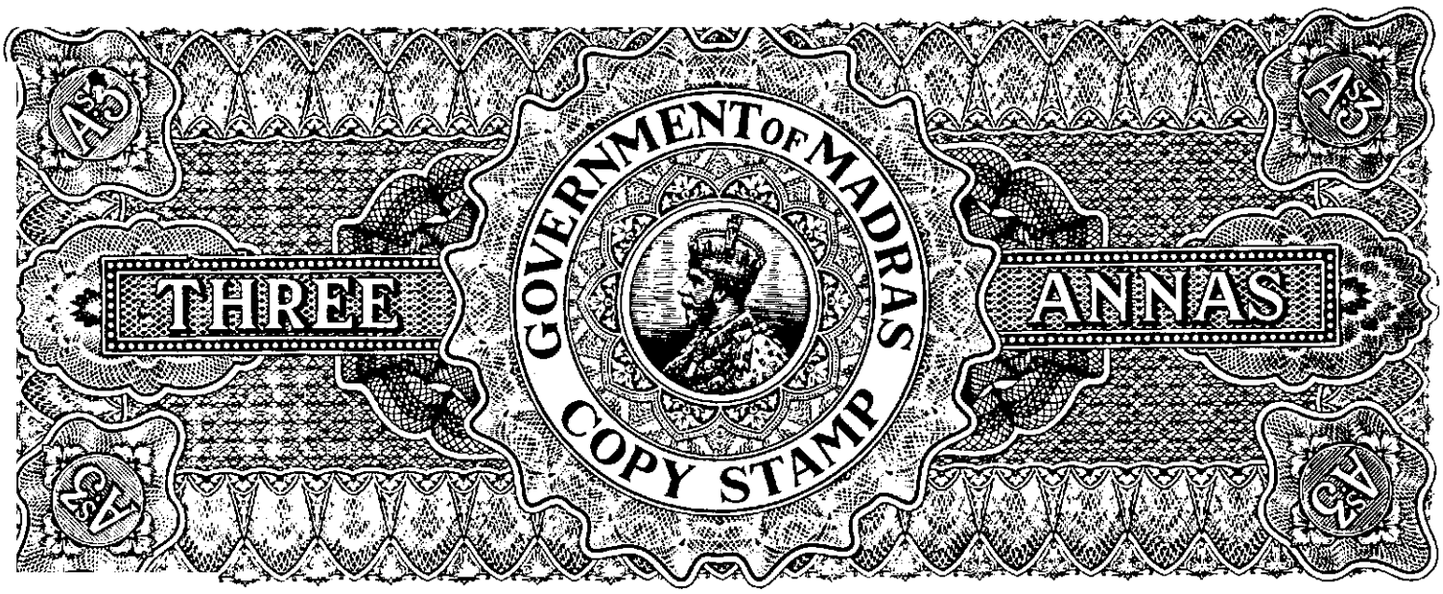
(who is the representative of the Secretary of State in the locality-) I have knowledge of the confirmation of the sale by the Official Receiver and by the Court. The Collector's Petition which of course is verified by oath shows that in spite of a correspondence which began in June 1932 with the Official Receiver the Official Receiver had not even then informed him of the price at which the land was sold, that is five months after the confirmation of the sale. The Tahsildar was directed to make inquiry from the Official Receiver; and the Tahsildar in September 1932 reported that he had not even then got full particulars from the Official Receiver. The collector then directed the Tahsildar to make a further inquiry This began on 5/11/1932 and a report was made to the Collector on 15/11/1932. It was upon the information contained in this report that the Collector moved the court to set aside the sale, alleging that a fraud had been committed upon the court in the conduct of the sale.

175/

PBR.

Tori

3rd cht.



I do not propose to comment upon the report or its contents because they must be the subject of further inquiry But I do not think there was any undue delay by the Collector in taking steps by an application to the court after he had been furnished with the Tahsildar's report-

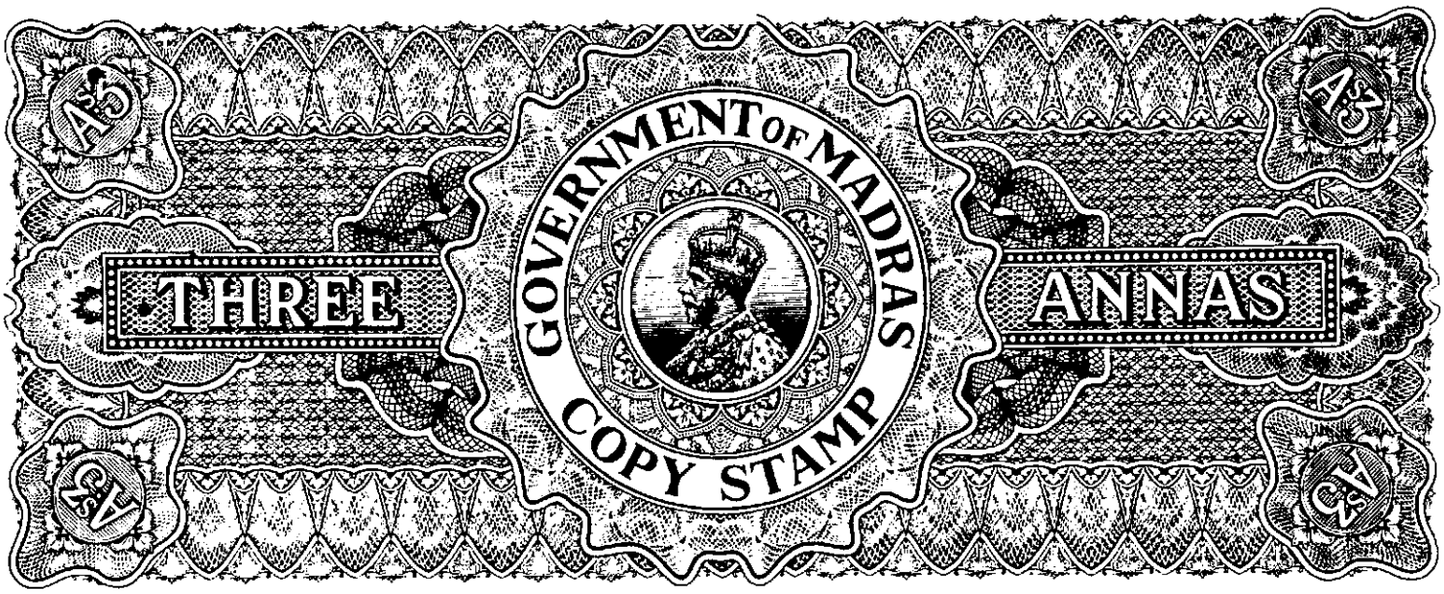
With regard to the learned District Judge's general proposition- that the Tahsildar was the agent of the Collector I think it is expressed in much too general language. But I am satisfied upon the material before me that he was not the agent of the Collector to agree to a confirmation of the sale. There is not the slightest evidence that the Tahsildar was authorized to do such a th ing, even if he did it. The statement by the Collector that he had no knowledge of the circumstances in which this sale came to be confirmed until he received the Tahsildar's report is not denied in the Respondents' counter-affidavit.

In my opinion, therefore, this was a case where the court ought to have exercised its discretionary power under Section 5

175/

Tcri

4th sht.



of the Limitation Act. The Appeal is accordingly allowed and the case is remitted to the Lower Court for disposal on its merits. The costs of this Appeal will abide the result of the further hearing.

(Sd) R. Satyamurthi Ayyar,

16/10/36

Dy. Registrar, A.S.,

(true Copy)

Supdt. of Copyists.

60/ 760

5th & the last cht

cy by T S Ranganathan.

Ed
B. Ramamurthy 11/11/36

Judgment.

A A O No. 195 of 1934.

[illegible], APPELLATE SIDE, [illegible]

C. D. No. 7145

Petition filed 3-11 1

Do. returned 1

Do. represented 1

Stamps called for 6-11 1

Do. deposited 7-11 1

Cl. Stamps called for 1

Do. deposited 1

Copy ready 12.

Do. delivered 14

G.F.16.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..		
When copied ..		
When examined..	16/12/36	
When signed ..		
When despatched.		

SUBJECT:— Advances - Loans - Bellary - C.M.A. No. 195/34 - High Court.

READ AGAIN _____, dated _____ 19____.

,, ,, _____ ,, _____ 19____.

READ *ALSO*:—

No. F-4980 From the ~~Govt Pleader, Madras~~ No. 1201, dated 18-11-1936. A

,, _____ ,, _____ ,, _____ ,, _____ 19____.

,, _____ ,, _____ ,, _____ ,, _____ 19____.

Order / Resolution — Ms. / Rout. No. _____, dated _____ 19____.

Ref:- F-4980/1-12-36

R. 18-12-36 Chn. 16-12-36

The collector of Bellary is requested to furnish the Board with a copy of the decree in the appeal C.M.A No. 195/34 on the file of the High Court. He is also requested to report the value of the appeal, the regulation fee on the value and the fee allowed by the Court. This information is required ~~for the purpose of sanctioning~~ in connection with the question of the payment of fees to the Govt Pleader, Madras, in the above mentioned appeal.

To the Collr of Bellary

From orders

Cos WD 15-12-36 15/12

C.F. 32.

If reply, please quote number, date and short title.*

19 Revenue DEPARTMENT.

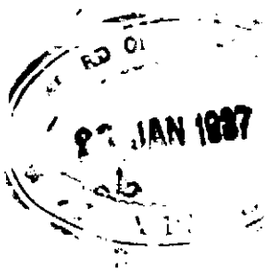
Received *Registered* FCSC

From (Name) A.G.Blake Esq., I.C.S.,

(Designation) Collector,

POST BOX ....., (STATION) Bellary.

Telegraphic Address .....



To

The Secretary to the Board of Revenue,
Madras.

Ref.C. *No.* 4809/36A-1 *dated* 20-1-37. *19*

Sir,

Advances- Loans- Bellary- C.M.A.No. 195/34- High court.

ENCLOSURES 1 w o p174

Ref:- Board's Refce.F. 4980/17-12-36.

SPARE COPIES .....

5021-864

I furnish herewith copies of the judgment and decree in the appeal C.M.A.No. 195/34 on the file of the High court. The sale held by the Official Receiver fetched Rs 700 while the claim of the Government for the taccavi loan was Rs 2700 (2650 principal and interest). The dividend declared by the Official Receiver to Government out of the amount was Rs. 631-4-0. A petition was filed on behalf of Government to set aside the sale held by the Official Receiver. The value of the petition and the appeal is taken to be Rs 2000/- but the fee is not calculated on the value of the subject matter of the proceedings in miscellaneous matters. The pleader's fee allowed by the District Judge in the petition was Rs 15 while the fee allowed by the High Court is Rs 35 according to the memo of costs in the decree.

M Lilly.
22-1-37.

A.S.N./21-1/P. 21/37

For Collector.

21

In the High Court of Judicature at Madras.

Monday, the twentyfirst day of September

One thousand Nine hundred and thirty six.

Present:- The Hon'ble Mr.Justice Cornish

Appeal Against Order No. 195 of 1934.

The Secretary of State for India in Council represented by the Collector of Bellary ----- Appellant(Petitioner)

1. Kappagal Idiga Irappa 2. Kappagal Idiga Sunkappa 3. Kappagal Idiga Seshamma 4. Bellary Arele Muddappa 5. Official Receiver Bellary --- Respondents(Counter-petitioners)

Appeal against the order of the District Court of Bellary dated the 24th day of October 1933 and made in I.A.No. 669 of 1932 in I.P.No. 13 of 1927.

O R D E R:-

This appeal coming on for hearing, the Court delivered the following judgment:-

The appeal is against an order of the District Judge of Bellary dismissing an application made under sections 68 and 78 of the Provincial Insolvency Act on behalf of the Secretary of State for India in Council to set aside a sale of an insolvent's property by the Official Receiver.

The application was made on 1-12-1932, and the sale which was sought to be set aside had been held on 10-11-1932, and confirme by the Court on 26-1-1932. The application was therefore long beyond the time limit allowed by section 68. The applicant, however, relied on section 5 of the Limitation Act which according to Section 78 governs applications made to the Insolvency Court.

The learned District Judge dismissed the application as out of time. That it undoubtedly was. But with all respect he does not seem to have applied his mind to the question whether the applicant had sufficient cause for not having made his application within the proper time limit. His reasoning was that the information of the date of sale was communicated to the Tahsildar. The Tahsildar was the agent of the Secretary of State and therefore the latter must be taken to be affected with the

knowledge of the result of the sale as soon as it had taken place. It seems to me that this line of reasoning misses the real point, which was when did the Collector(who is the representative of the Secretary of State in the locality) have knowledge of the confirmation of the sale by the Official Receiver and by the court. The Collector's petition which of course is verified by oath shows that in spite of a correspondence which began in June 1932 with the Official Receiver the Official Receiver had not even then informed him of the price at which the land was sold, that is five months after the confirmation of the sale, the Tahsildar was directed to make inquiry from the Official Receiver: and the Tahsildar in September 1932 reported that he had not even then got full particulars from the Official Receiver. The Collector then directed the Tahsildar to make a further inquiry. This began on 5-11-32 and a report was made to the Collector on 15-11-32. It was upon the information contained in this report that the Collector moved the court to set aside the sale, alleging that a fraud had been committed upon the court in the conduct of the sale.

I do not propose to comment upon the report or its contents because they must be the subject of further inquiry. But I do not think there was any undue delay by the Collector in taking steps by an application to the court after he had been furnished with the Tahsildar's report.

With regard to the learned District Judge's general proposition that the Tahsildar was the agent of the Collector, I think it is expressed in much too general language. But I am satisfied upon the material before me that he was not the agent of the Collector to agree to a confirmation of the sale. There is not the slightest evidence that the Tahsildar was authorised to do such a thing, even if he did it. The statement by the Collector that he had no knowledge of the circumstances in which this sale came to be confirm until he received the Tahsildar's report is not denied in the Respondent's Counter affidavit.

In my opinion therefore, this was a case where the court ought to have exercised its discretionary power under section 5 of the

Limitation Act. The Appeal is accordingly allowed and the case is remitted to the Lower court for disposal on its merits. The costs of this appeal will abide the result of the further hearing.

Sd/R. Satyamurthi Ayyar,
16-10-36

Dy.Registrar A.S.

(True Copy)

For Collector

A.S.N./21-1/P.

In the High Court of Judicature at Madras.

Monday the Twentyfirst day of September

One thousand and nine hundred and thirty six.

Present:- The Hon'ble Mr.Justice Cornish.

Appeal against Order No. 195 of 1934.

The Secretary of-State for India in Council represented by the Collector of Bellary- Appellant(Petitioner)

1. Kappagal Idiga Irappa 2. Kappagal Idiga Sunkappa 3.Kappagal Idiga Seshamma 4. Bellary Arele Muddappa 5. Official Receiver Bellary- Respondents(Counter petitioners)

Appeal against the order of the District court of Bellary date the 24th day of October 1933 and made in I.A.No. 669 of 1932 in I.P.No. 13 of 1927.

O R D E R:-

This appeal coming on for hearing, upon perusing the petition of appeal, the order of the Lower court and the material papers in the case, and upon hearing the arguments of Mr.K.S. Champakesa Ayyangar for the Government Pleader for the Appellant and of Mr.V.S. Narasimhachari, Advocate for the 3rd Respondent and the other Respondents not appearing in person or by pleader it is ordered that the order of the Lower court be and hereby is, reversed and the petition remanded and that the District Court of Bellary do restore the petition to its origin number in the register and proceed to dispose of it according to law and in the light of the observations contained in the judgment herein and it is further ordered that the costs of thi appeal do abide, follow the result and he provided for in the revised order of the Lower court.

Memorandum of Costs.

A.A.No. 195 of 1934.

Appellant's Costs.

	Rs	a	p
Stamp for Vakalatnama	0	Ø	0
Do used for the appeal memo	2	0	0
Do for enclosures	1	12	0
Value of copy stamps used for enclosures	1	5	0

	Rs	a	p
Batta and Postage	4	8	0
Pleader's fee allowed	35	0	0
Translation and printing charges	37	15	0
	24	8	0

3rd Respondent's Costs.

Stamp for Vakalatnama	3	0	0
Pleader's fee allowed	35	0	0
Translation and printing charges	15	12	0
	53	12	0

(True Copy,

Advances. Loans. (Bellary) -

Bellary Th - Kaifpagal Eerappa. Insolvency. Sale of properties by official receiver - C.M.A. No 195/54 Hegie Court - Remitted to lower Court - G.P's fees - Sanctd.

F 4980/56 pg 1 cf - G.

F 5131/56 p. 5 cf. B

F 498/56. p 19 cf. G.

Resolution Nos 474 of

b3:f

Contingent bill for Rs 35/- received from the G.P. Madras is forwarded to the Collector of Bellary. He is requested to Countersign and return it direct to the G.P. Madras.

2. The Board sanctions the payment of Rs 35/- (Rupees thirty five only) as fees to the G.P. Madras for his services in C.M.A. No 195/54 on the file of the High Court, Madras and issues the following certificate: -

Certified that the sum of Rs 35/- (Rupees thirty five only) sanctioned as fees to the G.P

Madras for his services in C.M.A. No 195/34 on the file of the High Court, Madras is not in excess of the amount which the Board of Revenue is empowered to sanction.

HH/VS

4.2.37.

HH/VS

To the Collr of Bellary with a ltr

1. G.P. Madras

1. A.Ch. Madras (par 2 only)

X Pl get from Accts.

CMP 3.4.4

Note file

Advances. Loans. (Bellary). Bellary Tk. Kappagal Erappa. Insolvency Sale of properties by Official Receiver. Appeal to Madras High Court. C.M.A. No 195 of 1934.

A.S(Sels)

pp1-3 cf ✓ 4980.36 from the G.P. Madras.

p5 cf ✓ 5131.36 R.D.

To A.S(Sels)

Please see the G.P's letter at p1 c The certified copy of the judgment of the High Court in the above appeal remitting the case to the Lower Court is at pp 7-15 c For a brief history of the case please see the G.P's letter at pp 63-64 cf of B.P. misc No 1739, dated 29.5.34 Copy p1

c

p3 cf

Is this in accordance with the rules? Examine & put up. 3/12

4. The G.P. has sent forwarded a bill for Rs 35 being his fees for his services in the above appeal. It may be forwarded to the Collr. with a request to countersign it and return it direct to the G.P. Madras

Draft Submitted

P.T.O

Ln
8/1/35
Lib
1/1
3/12

To AS.(Lett)

Please see the telephonic reply from the G.P. Madras at p-3 (Q).

2. The Govt may be asked to send a copy of the decree and to report the value of the ~~appeal~~ the regular fee on the value and the fee allowed by the Court

To AS (Coen)

draft submitted

Issued as the Board's Ref. F.4980/37 17-12-36 p17 c

F.498/37 p19 c

Please see the reply from the Govt. of Bellary at p19 c in reply to the Board's reference at p17 c. The amount of Rs.35 claimed by the GP is one allowed by the High Court. Vide the Copy of the decree at pp 25-26 c. A Section will please make further reference to A Sec. Govt. Secy's orders at p1 n/c

The fee of Rs 35/- allowed by the
Hp 25-26 ej High Court, and claimed by the
Gf Madras is apparently under
Rule 36 of the Rules framed
under the L.P Act for Civil
Miscellaneous Appeals. The
fee claimed may be sanctio
for orders.

F 254
Vol I
CROE

Joint . cey.
4 - FEB 1937

A.S (Secn) through
A Section.

To AS.

Draft submitted

T.M.

From

The Superintendent
Electric

To

The G.P Madras

CMA No 1905-34 Hyd Cant.
Advances. Loans. Obligatory.
your letter No 1201 dt 18. 11.36.

Please say urgently the valuation of the suit and the authority under which a fee of Rs35/ is claimed.

4/12/36

18/12/36

T.C. Please remind urgently and ask for a reply to my letter before this evening

4/12/36

Issued

5/12/36

Reminder

7/12/36

D. 7.12

To Supdt. A Sect.

Please see ~~[illegible]~~ p.
of the TM from the G.O. Madras
enclosed. As the Secy's query in the DNF
may please be answered and
the file submitted to A.S. Sect

Supdt A